IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

State of Rajasthan vs. Smt.Durga Joshi
(S.B.C.Writ Petition No.3160/02)

Dated:- 24th July, 2006

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Rameshwar Dave,Dy.G.A. , for the petitioner.

The present writ petition has been filed by the State of Rajasthan through Social Welfare Officer against the award dated 22.2.2001 passed by the Labour Court. By this award the Labour Court answered to the reference made to it by the appropriate Government on 16.7.1996. Reference made was whether removal of respondent Smt. Durga Joshi from the post of cook vide order dated 19.9.95 by the employer was legally justified and if not, what relief the workman was entitled to. On considering the arguments advanced by both the parties, Labour Court answered that the removal of respondent Durga Joshi from the post of Cook w.e.f. 19.9.95 was not legally justified but in stead of reinstating her in service, Labour Court granted to the respondent only a sum of Rs.95,000/- as compensation with the direction that such amount shall be paid to her within a period of three months from the date of publication of the award failing which the workman shall be entitled to a further interest @ 12% per annum.

I have heard the arguments advanced by Mr.Rameshwar Dave, learned Dy.Government Advocate.

This writ petition was listed in the Court on 4.7.2006. Nobody has however appeared on behalf of respondent in spite of service even though petition was taken up for hearing in the second round.

Mr.Rameshwar Dave, learned Dy.Government Advocate in assailing the award passed by the learned Labour Court argued that appointment of the respondent-workman was made by the Mess Committee of the Hostel and not by the State Government or any of its functionaries. The workman did not implead Mess Committee as party therefore her statement of claim itself should have been dismissed. He has argued that petitioner-State never terminated the services of the respondent-workman and even offered her to join back her duties. Her non-joining clearly proves that she left the job of her own accord. He argued that Labour Court has awarded excessive compensation to the respondent inasmuch as the respondent was mainly working on part time basis and her duty was fixed for two hours in the morning and for two hours in the evening. She was being paid Rs.250/- per month which was subsequently enhanced to Rs.350/- per month. In the circumstances, the award of compensation to the tune of Rs.95,000/- was rather on higher side.

I have examined the award passed by Labour Court on the anvil of the arguments made by Mr.Rameshwar Dave, the learned Dy.Government Advocate.

Learned Labour Court has noted that the respondent-workman was engaged on 19.9.88 and continued to work with the petitioner till 18.9.1995. Previously, she was given monthly wages of Rs.60/- which was later on increased to Rs.250/-. It has recorded a categorical finding that in the calender year immediately preceding the month of September,1995 , the workman has completed 265 days in service and earlier also since 1990 she had been regularly working with the petitioner for more than 240 days in each calendar year. The fact that she had been working with the petitioner continuously for last 6-7 years, there does not appear to be any reason that she would abandon her service. Labour Court further held that if the Management wanted to dispense with or dis-continue her services on the ground of absence, it was at least expected of them to inform her about the same. On the question that she was employee of Mess Committee and not of the State Government, the Labour Court has examined the Government and Aided Hostel Management Rules dated 18.1.1982. These Rules provide the procedure for admission to the hostel, management advisory committee, the number of students and number of teachers. The Rules also provides regarding the duties, discipline and facilities etc. as also payment of monthly allowance to the students. Although, the the Rules provides for constitution of Mess Committee from amongst the students but it also provides that the Hostel Superintendent would be the Chairman of the said Committee and Assistant Chairman would be its Accountant/Cashier who shall maintain accounts of the Committee. On analysis of all these provisions and the fact that hostel was maintained by the petitioner through the Social Welfare Department, the Labour Court held that the

respondent-workman was an employee of the petitioner. The Labour Court also recorded a categorical finding that compliance of Section 25-f of the Industrial Act has not made. The Labour Court also held that during the year 1999-2000, a large number of such employees who were working in the hostels runned by the Social Welfare Department were regularized and granted regular pay scale as per the scheme prepared by the State Government pursuant to judgments of the Hon'ble Supreme Court. The Labour Court therefore in the peculiar facts of this case finally concluded that the workman has not actually discharged the duties on the post of Cook since 1995. It noted that no employee working on daily wages/part time basis in service can be treated as employee only because he has worked for a period over one year or so unless it is established that a regular sanctioned post was available. In appropriate cases, compensation can be awarded instead of directing re-instatement of the workman. On this point, the Labour Court has referred to the following case law :-

(1) Rolastan Rohan vs. Central Industrial Tribunal
(1995 SCC(L&S) p.142.)
(2) Gujarat State Road Transport Corporation vs. Mulamra
(1995 SCC(L&T) p.141)
(3) Surjeet Ghosh vs. Uco Bank
(1995 SCC(L&S) p.529
(4) Godrama Cooperating Marketing vs. Presiding Officer
(L.L.R. 1996(1) p.644)
(5) M/s.Ayasher Goodearth vs. Rajendra Kumar Soni
(L.L.R. 199 p. 523)
(6) Ratan Singh vs. Union of India
(1998 SCC(L&S) p.170)
(7) Dharamveer Singh vs. State of Rajasthan
(WLC(Raj.) 1999 p.310)

Finally taking into account the fact that the monthly wages of Rs.350/- was increased to Rs.600/- in the month of February, 1995 and

the fact that the reference was made as late as on 16.7.1996, the Labour Court has directed lump sum amount should be paid to the workman from the month of June, 1996 till the date of award and in doing so also it has awarded the salary of only ten months. Thus, a total sum of Rs.95,000/- has been awarded.

In my view, the learned Labour Court has passed well considered award and has given detailed reasoning in support of its findings for awarding the benefit of lump sum compensation instead of granting relief of re-instatement with continuity in service.

The award passed by the Labour Court thus suffers from no illegality so as to warrant interference by this Court. The Writ petition is therefore, dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.